

Todd M. Friedman (SBN 216752)  
Adrian R. Bacon (SBN 280332)  
Meghan E. George (SBN 274525)  
LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
324 S. Beverly Dr., #725  
Beverly Hills, CA 90212  
Phone: 877-206-4741  
Fax: 866-633-0228  
[tfriedman@attorneysforconsumers.com](mailto:tfriedman@attorneysforconsumers.com)  
[abacon@attorneysforconsumers.com](mailto:abacon@attorneysforconsumers.com)  
[mgeorge@toddflaw.com](mailto:mgeorge@toddflaw.com)  
***Attorneys for Plaintiff***

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

TAMARA FALCONE, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

vs.

CRESCENT BANK AND TRUST  
INC., and DOES 1 through 10,  
inclusive, and each of them,

Defendant.

) Case No.

)

) **CLASS ACTION**

)

) **COMPLAINT FOR VIOLATIONS  
OF:**

)

1. NEGLIGENT VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227 ET  
SEQ.]
2. WILLFUL VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227 ET  
SEQ.]

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) **DEMAND FOR JURY TRIAL**

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Plaintiff TAMARA FALCONE (“Plaintiff”), individually and on behalf of  
all others similarly situated, alleges the following upon information and belief  
based upon personal knowledge:



1 is a nationwide banking institution specializing in providing financing to  
2 customers with sub-prime credit, and is a “person” as defined by 47 U.S.C. § 153  
3 (39).

4 6. The above named Defendant, and its subsidiaries and agents, are  
5 collectively referred to as “Defendants.” The true names and capacities of the  
6 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
7 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
8 names. Each of the Defendants designated herein as a DOE is legally responsible  
9 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend  
10 the Complaint to reflect the true names and capacities of the DOE Defendants  
11 when such identities become known.

12 7. Plaintiff is informed and believes that at all relevant times, each and  
13 every Defendant was acting as an agent and/or employee of each of the other  
14 Defendants and was acting within the course and scope of said agency and/or  
15 employment with the full knowledge and consent of each of the other Defendants.  
16 Plaintiff is informed and believes that each of the acts and/or omissions  
17 complained of herein was made known to, and ratified by, each of the other  
18 Defendants.

### 19 **FACTUAL ALLEGATIONS**

20 8. Beginning in or around October 13, 2015, Defendant contacted  
21 Plaintiff on Plaintiff’s cellular telephone number ending in -5893, in an attempt to  
22 solicit Plaintiff to purchase Defendant’s services.

23 9. Defendant used an “automatic telephone dialing system”, as defined  
24 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

25 10. Defendant contacted or attempted to contact Plaintiff from telephone  
26 number (866) 208-8288, on at least two (2) occasions.

27 11. Defendant’s calls constituted calls that were not for emergency  
28 purposes as defined by 47 U.S.C. § 227(b)(1)(A).



1           17. The Class is so numerous that the individual joinder of all of its  
2 members is impractical. While the exact number and identities of The Class  
3 members are unknown to Plaintiff at this time and can only be ascertained  
4 through appropriate discovery, Plaintiff is informed and believes and thereon  
5 alleges that The Class includes thousands of members. Plaintiff alleges that The  
6 Class members may be ascertained by the records maintained by Defendant.

7           18. Plaintiff and members of The Class were harmed by the acts of  
8 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
9 and Class members via their cellular telephones thereby causing Plaintiff and  
10 Class members to incur certain charges or reduced telephone time for which  
11 Plaintiff and Class members had previously paid by having to retrieve or  
12 administer messages left by Defendant during those illegal calls, and invading the  
13 privacy of said Plaintiff and Class members.

14           19. Common questions of fact and law exist as to all members of The  
15 Class which predominate over any questions affecting only individual members  
16 of The Class. These common legal and factual questions, which do not vary  
17 between Class members, and which may be determined without reference to the  
18 individual circumstances of any Class members, include, but are not limited to,  
19 the following:

- 20           a. Whether, within the four years prior to the filing of this  
21 Complaint, Defendant made any telemarketing/solicitation call  
22 (other than a call made for emergency purposes or made with  
23 the prior express consent of the called party) to a Class  
24 member using any automatic telephone dialing system or any  
25 artificial or prerecorded voice to any telephone number  
26 assigned to a cellular telephone service;
- 27           b. Whether Plaintiff and the Class members were damages  
28 thereby, and the extent of damages for such violation; and

1 c. Whether Defendant should be enjoined from engaging in such  
2 conduct in the future.

3 20. As a person that received numerous telemarketing/solicitation calls  
4 from Defendant using an automatic telephone dialing system or an artificial or  
5 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
6 claims that are typical of The Class.

7 21. Plaintiff will fairly and adequately protect the interests of the  
8 members of The Class. Plaintiff has retained attorneys experienced in the  
9 prosecution of class actions.

10 22. A class action is superior to other available methods of fair and  
11 efficient adjudication of this controversy, since individual litigation of the claims  
12 of all Class members is impracticable. Even if every Class member could afford  
13 individual litigation, the court system could not. It would be unduly burdensome  
14 to the courts in which individual litigation of numerous issues would proceed.  
15 Individualized litigation would also present the potential for varying, inconsistent,  
16 or contradictory judgments and would magnify the delay and expense to all  
17 parties and to the court system resulting from multiple trials of the same complex  
18 factual issues. By contrast, the conduct of this action as a class action presents  
19 fewer management difficulties, conserves the resources of the parties and of the  
20 court system, and protects the rights of each Class member.

21 23. The prosecution of separate actions by individual Class members  
22 would create a risk of adjudications with respect to them that would, as a practical  
23 matter, be dispositive of the interests of the other Class members not parties to  
24 such adjudications or that would substantially impair or impede the ability of such  
25 non-party Class members to protect their interests.

26 24. Defendant has acted or refused to act in respects generally applicable  
27 to The Class, thereby making appropriate final and injunctive relief with regard to  
28 the members of the Class as a whole.

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-24.

26. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

27. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

28. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

29. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-28.

30. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

31. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

32. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 8<sup>th</sup> Day of February, 2015.

**LAW OFFICES OF TODD M. FRIEDMAN, P.C.**

By: /s/ Todd M. Friedman  
Todd M. Friedman  
Law Offices of Todd M. Friedman  
Attorney for Plaintiff